

# EXHIBIT 23

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOROTHY FORTH, DONNA  
BAILEY, LISA BULLARD,  
RICARDO GONZALES,  
CYNTHIA RUSSO, TROY,  
INTERNATIONAL  
BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL  
38 HEALTH AND WELFARE  
FUND, INTERNATIONAL  
UNION OF OPERATING  
ENGINEERS LOCAL 295-295C  
WELFARE FUND, AND  
STEAMFITTERS FUND LOCAL  
439, on Behalf of  
Themselves and All  
Others Similarly  
Situated,

Plaintiffs,

vs.

WALGREEN CO.,

Defendant.

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VIDEO DEPOSITION OF  
STEAMFITTERS FUND LOCAL 439

by and through

CHARLES E. BAILEY JUNIOR

June 11, 2019

9:27 a.m.

10 South Wacker Drive, 40th Floor  
Chicago, Illinois

Deanna Amore - CRR, RPR, CSR - 084-003999

1 Medtrak Services?

2 A. Uh-huh.

3 Q. Is it okay if I call them Medtrak for  
4 short?

5 A. Uh-huh.

6 Q. Medtrak is your former PBM; correct?

7 A. Yes.

8 Q. Now, we've seen documents that show they  
9 were your PBM -- and when I say "your," I mean the  
10 Fund's -- since 2008. Do you know if Medtrak was  
11 the Fund's PBM prior to 2008?

12 A. The timeline I have is 2007 to 2014.

13 Q. So starting January 14, 2007, they became  
14 the Fund's PBM?

15 A. Yes.

16 Q. So the contract we'll look at later starts  
17 January 1, 2008. Do you believe that there is a  
18 one-year contract that they signed in January 2007?

19 A. Being that I wasn't a trustee or really  
20 involved with the Health and Welfare at that time,  
21 I don't know exactly what document that was, but  
22 I did see that same document you're talking about.

23 Q. So who was the Fund's PBM in 2007?

24 MR. GUGLIELMO: Objection. Asked and answered.

1 BY MR. LEIB:

2 Q. You can answer.

3 A. The timeline I was given by Kathy Jaegers  
4 was 2007 to 2014 that we used Medtrak, and I can  
5 only go by her expertise since she's been around  
6 since 1995.

7 Q. So that was one of the questions you asked  
8 Ms. Jaegers?

9 A. Yes.

10 Q. But nobody was able to find a contract; is  
11 that correct?

12 A. Obviously, there is only one from 2008,  
13 yes.

14 Q. Did you request from J.W. Terrill to  
15 locate any contracts that existed starting in 2007?

16 A. I believe the lawyers asked J.W. Terrill  
17 for all information regarding this case. I did not  
18 personally, no, nor did the Fund.

19 Q. Did anyone at the Fund, or its attorneys,  
20 contract Medtrak to find out if they had a copy of  
21 a contract from 2007?

22 A. That, I don't know.

23 Q. Did anyone at the Fund contract -- contact  
24 anyone at Medtrak to find out if anyone at Medtrak

1 anything. This is the split of the amount that the  
2 PBM charges, the split that the Fund pays versus  
3 the member pays, and my question has been who  
4 determines what that split is. You had said the  
5 PBM, but now I'm not sure you believe it's the PBM.

6 A. Yeah, I misspoke. This would be under the  
7 guidance of J.W. Terrill on what our Fund needs to  
8 recoup money for the amount of money it's putting  
9 in per week, year. So she's -- they've determined  
10 that we have to ask a minimum at this point to pay  
11 25 percent out-of-pocket if we are going to cover  
12 75 percent.

13 Q. So the Fund has to make sure it doesn't  
14 run out of money; correct?

15 A. Yes.

16 Q. And it asked J.W. Terrill to advise it on  
17 how much the members should pay versus the Fund  
18 paying; correct?

19 A. Yes.

20 Q. Ultimately, am I correct that it's the  
21 trustees who make that determination?

22 A. Yes.

23 Q. Do you know what "retail price" means?

24 A. Yes.

1 Q. What does retail price mean?

2 A. The price sold at a retailer for a  
3 product.

4 Q. Do you have an understanding that retail  
5 price means the full price and does not include any  
6 coupons or discounts?

7 A. Yes.

8 Q. Do you know what is meant by "usual and  
9 customary price" also known as U&C price?

10 A. Yes.

11 Q. What is your understanding of what usual  
12 and customary price is?

13 A. It's the price of a medical service or  
14 pharmaceutical in a geographic area and what  
15 similar cost is in that area including incentives  
16 or rebates.

17 Q. Who determines what the geographic area  
18 is?

19 A. Are you talking about me or the Fund?

20 Q. Well, you just said that the usual and  
21 customary price is, in your understanding, a  
22 medical service or pharmaceutical in a geographic  
23 area and what similar cost is in that area  
24 including incentives or rebates. I am trying to

1 correct?

2 A. Yes.

3 Q. And I think we've already established  
4 before the Fund never told its members that in the  
5 Fund's opinions the members were being overcharged  
6 by Walgreens; correct?

7 A. Yes.

8 Q. Yes, you're agreeing with my statement;  
9 correct?

10 A. What was your statement again? Repeat it,  
11 please.

12 Q. I'll ask it as an open-ended.

13 Has the Fund ever told its members that,  
14 in the Fund's opinion, the members are being  
15 overcharged by Walgreens for certain drugs?

16 A. No, we have not.

17 Q. In fact, rather than precluding its  
18 members from using Walgreens, or even encouraging  
19 its members not to use Walgreens, after it filed  
20 this lawsuit, the Fund changed its plans to require  
21 that its beneficiaries either use LDI mail order or  
22 Walgreens to fill 90-day supplies of maintenance  
23 medication; correct?

24 A. For three months from January 1 to

1 March 1 of 2019, Walgreens was the exclusive  
2 maintenance drug retailer because we were having  
3 issues with the mail order through LDI.

4 Q. I'm actually not talking about 2019. I am  
5 talking starting in 2018.

6 A. Uh-huh. I'm just saying there has been an  
7 instance where they were the strict pharmacy but --

8 Q. And the reason that for the three-month  
9 period, January 1 to March -- what did you say?  
10 What time period in March?

11 A. March 1.

12 Q. March 1.

13 So for those two months --

14 A. Three months.

15 Q. January 1 to March 1?

16 A. Okay. Yeah.

17 Q. So for those two months in the beginning  
18 of 2019, Walgreens was the exclusive maintenance  
19 drug retailer, and the reason for that is because  
20 the Fund actually changed its plan, after filing a  
21 lawsuit, to require that the only retail pharmacy  
22 in which a 90-day supply of maintenance medication  
23 could be purchased by its members is Walgreens;  
24 correct?



1           A.     Yes.

2           Q.     And then for those two months, it  
3     eliminated the mail order option, the LDI mail  
4     order option, because it was having problems with  
5     LDI; correct?

6           A.     Yes.

7           MR. LEIB:   We'll mark 108.

8                                 (Whereupon, Exhibit 108 was  
9                                 marked for identification.)

10          BY MR. LEIB:

11          Q.     Have you seen this document before?

12          A.     Yes, I have.

13          Q.     Have you seen the email or just the  
14     attachment?

15          A.     Yeah, I've seen the email.

16          Q.     And what is this document, including the  
17     attachment?

18          A.     This is a summary of material  
19     modifications.

20          Q.     And its modifications to your welfare  
21     plan; correct?

22          A.     Yes.

23          Q.     And in this email cover page,  
24     Lisa Suemnicht, S-u-e-m-n-i-c-h-t, from

1 J.W. Terrill wrote to Janie Bailey, "Here is the  
2 full copy of the mailing that went out today for  
3 your records." Do you see that?

4 A. Uh-huh.

5 Q. Who did the mailing go to?

6 A. It looks like Janie Bailey.

7 Q. But Janie is saying -- I'm sorry. The  
8 email is telling Janie that J.W. Terrill sent out  
9 this attachment. Do you see that?

10 A. Uh-huh.

11 Q. Who did the attachment go to?

12 A. I'd be speculating on who this went to.  
13 I'm not sure.

14 Q. Do you know -- you said you recognize the  
15 attachment; correct?

16 A. Yes, I've seen this in the data.

17 Q. Prior to preparing for this deposition,  
18 had you seen this before?

19 A. No.

20 Q. Do you know if this went to the members  
21 and participants in the plan?

22 A. Yes. This document, 385, would have went  
23 to the membership.

24 Q. And that's 385 through 387; correct?

1           A.    I would say so.  I wouldn't see why they'd  
2   have this copied on the back if that wasn't  
3   included but...

4           Q.    And there is a whole list of addresses in  
5   the back, people with these addresses.  Do you know  
6   who those people are?

7           A.    Yes.

8           Q.    Who are those people?

9           A.    Members of Steamfitters Local 439.

10          Q.    So then that makes sense that this went to  
11   those people; correct?

12          A.    Yes.

13          Q.    And this, in fact, if we look at page 385,  
14   this reflects a change in the welfare plan;  
15   correct?

16          A.    Yes.

17          Q.    And it says "As of May 1, 2018, the Plan  
18   has added Walgreens retail locations as an option  
19   for obtaining a 90-day supply of maintenance  
20   medications.  The Plan's prescription drug supply  
21   limitation (Section X.C. on page 59 of your SPD)  
22   has been updated to read as follows."

23                   And then the change in the plan is "Drugs  
24   are limited to a 34-day supply per prescription or

1     refill, except maintenance drugs (prescriptions to  
2     treat chronic or long-term conditions), which are  
3     limited to a 90-day supply for each prescription  
4     refill. Maintenance drug must" -- and it  
5     underlines must -- "be obtained through Walgreens  
6     or through the LDI Home Advantage Select mail order  
7     program (although new prescriptions for a 30-day  
8     supply may be filled up to two times at any retail  
9     pharmacy)." Do you see that?

10       A.     Yes.

11       Q.     And this change occurred, would you agree,  
12     well after November 2017?

13       A.     Yes.

14       Q.     So when this change was made, you were  
15     already -- strike that.

16               So when this change was made, the Fund had  
17     already voted, the trustees had already voted to  
18     file a lawsuit against Walgreens; correct?

19       A.     Yes.

20       Q.     And, in fact, the date of this email is  
21     6-20-2018 or June 20, 2018, and that's after the  
22     May 1, 2018, filing of the Second Amended  
23     Complaint; correct?

24       A.     Yes, I believe so.

1           Q.     And in the lawsuit you're alleging that  
2     Walgreens is overcharging the Fund and its members  
3     for certain generic drugs; correct?

4           A.     Yes.

5           Q.     But if the Fund believes Walgreens is  
6     overcharging it for PSC generics, why, after  
7     becoming aware of Walgreens' practice of how  
8     Walgreens charges the Fund and its members for PSC  
9     generics, did the Fund amend its plan to make  
10    Walgreens the exclusive retail pharmacy where its  
11    members are permitted to fill out 90-day  
12    prescriptions for maintenance medications?

13          MR. GUGLIELMO:   Objection.   Form.

14          You can answer.

15          THE WITNESS:   As I stated before, I mean,  
16    people are used to going to certain pharmacies.  
17    These pharmacies, such as Walgreens, is available  
18    to a lot more people than the mom and pop shops  
19    that aren't open anymore.   So we can't limit our  
20    people to not use pharmacies, and Walgreens,  
21    obviously, can handle the demand that our  
22    membership needed.

23          BY MR. LEIB:

24          Q.     This provision makes Walgreens the

1 exclusive retail pharmacy for 90-day supplies of  
2 maintenance medications; correct?

3 MR. GUGLIELMO: Objection. Form.

4 BY MR. LEIB:

5 Q. The amendment, as reflected on page 385,  
6 makes Walgreens the exclusive retail pharmacy for  
7 90-day supplies of maintenance medication; correct?

8 MR. GUGLIELMO: Objection. Form.

9 You can answer.

10 THE WITNESS: Yes. Besides LDI, though. So  
11 they're not totally exclusive.

12 BY MR. LEIB:

13 Q. I said the "exclusive retail pharmacy";  
14 right?

15 A. Yes.

16 Q. Previously, the Fund -- and we can look at  
17 documents if you don't know -- but previously, am  
18 I right that the Fund required all 90-day supplies  
19 of maintenance medication to be filled by mail  
20 order?

21 A. No, that's not correct.

22 Q. Okay.

23 A. The first two maintenance drugs can be  
24 filled at a retail. After that they were -- it was

1 mandatory up until the January 1 meeting where they  
2 decided to get rid of the LDI mandatory mail order,  
3 but you had to do two retail -- you could do two  
4 retail purchases for maintenance drugs before you  
5 had to go on the mail order side of it.

6 Q. So prior to this change, after you filled  
7 your first two 30-day prescriptions of maintenance  
8 medication, you were required to do a 90-day  
9 supply; correct?

10 A. Yes.

11 Q. And were you required to do a 90-day  
12 supply through mail order?

13 A. After you used the two up at a retail,  
14 yes.

15 Q. And let's look at the 2013 plan, which is  
16 Exhibit 106, and look at page 59. Do you see under  
17 (B) it says "Participating Pharmacies"?

18 A. Yes.

19 Q. "Only prescription drugs obtained from  
20 pharmacies participating in the Medtrak network" --  
21 because at that time Medtrak was your PBM; correct?

22 A. Yes.

23 Q. -- "are covered under the plan. It is  
24 very important that you choose a Medtrak pharmacy,

1 as prescription drugs purchased from non-Medtrak  
2 pharmacies are not covered. Directories of Medtrak  
3 pharmacies (including Performance 90) locations are  
4 available in the Fund office."

5 Do you know what the Performance 90  
6 locations were?

7 A. No, I do not.

8 Q. It wasn't exclusively Walgreens; correct?

9 A. No, there was plenty of in-network  
10 pharmacies that they could go to.

11 Q. And then under "(C) Supply Limitations.  
12 Drugs are limited to a 34-day supply for  
13 prescription and refill, except maintenance drugs  
14 who are limited to a 90-day supply for each  
15 prescription or refill. Maintenance drugs may be  
16 obtained through the mail order program or at a  
17 'Performance 90' retail pharmacy."

18 Do you see that?

19 A. Yes.

20 Q. Did that change at some point where the  
21 requirement was that it be done only through mail  
22 order?

23 A. From 2016 to 2019 is when they were trying  
24 to utilize the LDI mail order situation, and then,



1     like I said before, that's where they were having  
2     issues with getting the maintenance drugs on a  
3     timely manner. So it kind of got tweaked  
4     throughout the years until the final point where,  
5     you know, they just told them if you want to do the  
6     mail order, you could do the mail order. If not,  
7     there was no mandatory on it then.

8           Q.     Are you saying that the 2013 plan was  
9     amended to provide that instead of being able to  
10    use a retail pharmacy, it was an exclusive  
11    requirement that for a 90-day maintenance supply,  
12    it be mail order?

13          A.     Yeah, from 2016.

14          Q.     I have not been -- I do not believe we've  
15    been provided that amendment.

16          A.     This is in conversation that I've had with  
17    Kathy Jaegers, just talking about different parts  
18    of our plan.

19          Q.     So what this shows then, this full  
20    discussion, is that sometime -- at some times  
21    during the period 2007 to the present, you've  
22    allowed your members to fill 90-day supplies of  
23    maintenance medications either by mail order or  
24    through some Performance 90 retail pharmacy

1 network, while at other times you've required them  
2 to do mail order only; correct?

3 A. Yes.

4 Q. And then as of May 1, 2018, you allow your  
5 members to get 90-day prescriptions filled for  
6 maintenance medication at either LDI, mail order,  
7 or Walgreens except for the two months between  
8 January 1 and March of this year in which it was  
9 just Walgreens exclusively; correct?

10 A. Yes.

11 Q. The Fund didn't have to make Walgreens the  
12 exclusive retail pharmacy; correct?

13 A. No, we did not.

14 Q. But it chose to do that; correct?

15 A. Because of their locations.

16 Q. Well, if you make more locations  
17 available -- strike that.

18 If you make more pharmacy chains  
19 available, you would make more locations available;  
20 correct?

21 MR. GUGLIELMO: Objection. Form.

22 THE WITNESS: I mean, it just depends on where  
23 you are at.

24 BY MR. LEIB:

1           Q.    Well, by definition, instead of including  
2   only Walgreens as the exclusive retail pharmacy for  
3   90-day supply maintenance medication fills and  
4   refills, you allowed it to be Walgreens and CVS,  
5   you would have more locations; correct?

6           A.    Yes.

7           Q.    But you chose to make Walgreens the  
8   exclusive retail pharmacy for 90-day fills and  
9   refills of 90-day maintenance medication supplies;  
10   correct?

11          MR. GUGLIELMO:  Objection.  Asked and answered.  
12          You can answer.

13          THE WITNESS:  Like I said before, it's  
14   continuity of care, people being used to going to  
15   certain pharmacies.  We didn't want to limit  
16   people.  We know they have three times the  
17   locations as their biggest competitors.  I mean, it  
18   just seemed like regardless if we have issues with  
19   them right now, we couldn't eliminate them from our  
20   pool of pharmacies just because we have a  
21   disagreement at this point.

22          BY MR. LEIB:

23          Q.    But you did limit people; correct?  You  
24   limited anybody who was using a pharmacy other than

1 Walgreens, you limited them to change to using  
2 Walgreens if they didn't want to use the mail  
3 order; correct?

4 A. Yes.

5 Q. So when you say "We didn't want to limit  
6 people," it's actually not a true statement;  
7 correct?

8 MR. GUGLIELMO: Objection. Mischaracterizes  
9 testimony.

10 THE WITNESS: I mean, we were looking for the  
11 majority. We can't -- we were trying to appease  
12 the majority of our membership.

13 BY MR. LEIB:

14 Q. So if you were trying to appease the  
15 majority of your membership, wouldn't the best  
16 thing to have done is to allow them to go to  
17 multiple different retail chains so they could  
18 choose the pharmacy of their choice?

19 MR. GUGLIELMO: Objection.

20 We're still talking about the mail order;  
21 correct?

22 MR. LEIB: Yeah, for the 90-day prescription  
23 supplies of maintenance medication.

24 THE WITNESS: Again, I don't know. With the

1 guidance of J.W. Terrill and Kathy, there was  
2 reasons behind why we did all of this stuff. So if  
3 they thought Walgreens was the best provider for a  
4 pharmacy, that's why we did it. We did a lot of  
5 stuff when it comes to medical issues through her  
6 guidance because she is the professional; we are  
7 not.

8 BY MR. LEIB:

9 Q. Did the Fund tell J.W. Terrill that it  
10 didn't want to use Walgreens as the exclusive  
11 pharmacy because it was in a litigation with it?

12 A. No, we didn't.

13 Q. If you look back at Exhibit 108, which is  
14 the amendment to the plan -- before you look at  
15 that, let me ask you this question: For retail  
16 pharmacies, your network is broader than just  
17 Walgreens; correct?

18 A. Yes.

19 Q. And your members do utilize pharmacies  
20 other than Walgreens; correct?

21 A. Yes, I suppose so.

22 Q. If you look at page 386, under -- in the  
23 middle of the page, it says "Exclusive Walgreens  
24 90-Day Maintenance Program & LDI Home Advantage

1 Mail Order." Do you see that?

2 A. Yes.

3 Q. And this is basically a communication to  
4 your members, and on the next page there is  
5 questions and answers; correct?

6 A. Yes.

7 Q. And it says under "Exclusive Walgreens" --  
8 what we just read, it says there "Do you have  
9 medications you take every day? Your plan allows  
10 two convenient options to fill your maintenance  
11 medications. You are allowed two 30-day fills at  
12 your retail pharmacy and then subsequent fills must  
13 be obtained through a Walgreens retail pharmacy or  
14 LDI Home Advantage (mail order)."

15 Do you see that?

16 A. Yes.

17 Q. If you look at the next page, the third  
18 question, "If I," and it's a question that a member  
19 would ask; right?

20 A. Uh-huh.

21 Q. "If I use Walgreens for refills, will I be  
22 able to receive a 90-day supply immediately"?

23 The answer is "No. Regardless of the  
24 retail pharmacy you use, your first two fills will

1     only be a 30-day supply. Although we encourage  
2     using Walgreens for seamless service, the first two  
3     fills may be obtained through any network retail  
4     pharmacy. Subsequent 90-day fills must be obtained  
5     through a Walgreens retail pharmacy or LDI Home  
6     Advantage (mail order)."

7             If the Fund believes Walgreens is  
8     overcharging it for PSC generics, why would it  
9     encourage its members to use Walgreens for the  
10    first two fills that it could fill at any retail  
11    pharmacy?

12            A. I just think because they are -- there is  
13    more locations, and like I said, I don't know if  
14    there was problems with other pharmacies in the  
15    area, if that's why Walgreens became a major  
16    choice. I mean, I would say generally it's just  
17    because of their locations. They have many  
18    locations, and people could get there a lot sooner.  
19    And if they are older and they can't drive, it's  
20    not a burden to them to try to get their  
21    medications when needed.

22            Q. Are you aware of any problems with other  
23    pharmacies in the area?

24            A. No, I'm not.

1           Q.    If somebody was using, let's say, CVS,  
2    maybe because it's the closest one to their home,  
3    and they received this, they received a  
4    communication from the Fund encouraging them to use  
5    a different pharmacy for their first two 30-day  
6    fills of maintenance medication; correct?

7           A.    I mean, it's also asking that any network  
8    retail pharmacies available.

9           Q.    Well, it's telling them that any network  
10   pharmacy is available?

11          A.    Yeah.

12          Q.    But it's encouraging them to use  
13   Walgreens, even if their regular pharmacy is a  
14   different pharmacy; correct?

15          A.    But it's not telling them they have to use  
16   Walgreens.

17          Q.    I didn't ask you if it was telling them  
18   they have to use Walgreens. I am asking if it's  
19   telling them even if their pharmacy, their regular  
20   retail pharmacy is different than Walgreens, it's  
21   encouraging them to use Walgreens for their first  
22   two fills of maintenance medication; correct?

23          MR. GUGLIELMO:  Objection.  Form.

24          THE WITNESS:  Yeah, I mean, it's wording that



1     it's encouraging them to use Walgreens.

2     BY MR. LEIB:

3         Q.     And it didn't have to do that; right?

4                 It could have just said, "You can use any  
5     network retail pharmacy for doing these two fills";  
6     correct?

7         MR. GUGLIELMO:   Objection.   Misstates the  
8     statement.   And it's taking this document out of  
9     context.

10         THE WITNESS:   Yeah, it's saying you can refill  
11     at any network pharmacy, retail pharmacy.

12     BY MR. LEIB:

13         Q.     But it could have -- I'm sorry.

14                 It could have left off that first part  
15     about encouraging using Walgreens; correct?

16         A.     Sure.

17         Q.     Do you know who authorized this to go out,  
18     this document?

19         A.     I would say LDI.   LDI created it.   So they  
20     are in pharmaceuticals so --

21         Q.     Did the Fund review it?

22         A.     I did not review it, no.   I'm sure  
23     somebody from the Fund is aware of it, but I don't  
24     know who.

1 BY MR. LEIB:

2 Q. What do you mean by directly -- "not  
3 directly"?

4 A. Our money gets to them somehow or they  
5 wouldn't give us the product.

6 Q. Well, the Fund does not have a contract  
7 with Walgreens; correct?

8 A. No, we do not.

9 Q. Do you understand that the PBM has a  
10 contract with Walgreens?

11 A. Yes.

12 Q. And the PBM pays Walgreens according to  
13 the terms of its contract with Walgreens; correct?

14 A. Yes.

15 Q. And the Fund doesn't know what the terms  
16 of the contract are between, in this case, Medtrak  
17 and Walgreens; correct?

18 A. That, I'm not aware of.

19 Q. Right.

20 The Fund doesn't know; correct?

21 A. Yes.

22 Q. Because the Fund's never seen the contract  
23 between Medtrak and Walgreens; correct?

24 A. I haven't, no.

1 Q. Has anyone at the Fund?

2 A. I don't believe so, no.

3 Q. In fact, the Fund is required to pay  
4 Medtrak whatever is stated in its agreement with  
5 Medtrak; correct?

6 A. Yes.

7 Q. That's regardless of whatever the contract  
8 between Medtrak and Walgreens states; correct?

9 A. Yes.

10 Q. The obligations that the Fund has to  
11 Medtrak are only those obligations that are in the  
12 contract; correct?

13 A. 75 percent of what we pay for the  
14 pharmaceuticals.

15 Q. The obligation that the Fund has to  
16 Medtrak are only those obligations that are in the  
17 contract; correct?

18 A. Yes.

19 Q. If we look at -- again, that sentence says  
20 that the paid claim charges are "defined and  
21 described in Exhibit B." You see that; right?

22 A. Yes.

23 Q. So let's look at Exhibit B on page 10.

24 It says "Exhibit B, Financial Terms." Are

1 and customary?

2 A. Again, I don't know that answer.

3 Q. This definition of usual and customary is  
4 in your contract with Medtrak; correct?

5 A. Yes.

6 Q. So isn't it true that if you paid more  
7 than the usual and customary price that's required  
8 by your contract with Medtrak, that your complaint  
9 is with Medtrak, not Walgreens?

10 A. Well, Medtrak, at this time, they weren't  
11 filling the prescriptions. I mean, we were getting  
12 them from Walgreens. So...

13 Q. Do you understand when a prescription gets  
14 filled, that Walgreens interfaces with the PBM so  
15 the PBM can tell it how much to charge the member?

16 MR. GUGLIELMO: Objection. Form.

17 THE WITNESS: Yes.

18 BY MR. LEIB:

19 Q. So now going back to my other question,  
20 isn't it true that if the Fund paid more than the  
21 usual and customary price as required by the Fund's  
22 contract with Medtrak, that the Fund's complaint is  
23 with Medtrak, not Walgreens?

24 MR. GUGLIELMO: Objection. Form.

1           You can answer.

2           THE WITNESS: I don't -- I don't know what the  
3           relationship Medtrak has with Walgreens. I can't  
4           speak for them. I don't know their contracts with  
5           each other. All I know is Walgreens offered a  
6           certain price, and we didn't get that price.

7           BY MR. LEIB:

8           Q.     You contracted with Medtrak; correct?

9           A.     Yes.

10          Q.     You expected Medtrak -- Medtrak to charge  
11          you the price required by the contract; right?

12          A.     Yes.

13          Q.     If you don't get a price required by the  
14          contract, then Medtrak would be in breach of your  
15          contract; correct?

16          MR. GUGLIELMO: Objection. Calls for a legal  
17          conclusion.

18          You can answer.

19          THE WITNESS: Again, I don't know what their  
20          relationship is and what information they can get  
21          from Walgreens. I don't --

22          BY MR. LEIB:

23          Q.     I'm not asking about information they can  
24          get from Walgreens. I am asking you if Medtrak

1 does not charge you what they are allowed -- strike  
2 that.

3 I'm asking you if Medtrak charges you  
4 something other than what they are allowed to  
5 charge you under your contract with Medtrak, then  
6 it would be Medtrak that would owe you money;  
7 correct?

8 MR. GUGLIELMO: Objection. Form.

9 THE WITNESS: Medtrak needs to follow the rules  
10 that we have set up in here.

11 BY MR. LEIB:

12 Q. And if they don't, you would have a  
13 complaint with Medtrak; correct?

14 A. Yes.

15 Q. If you can look at the Second Amended  
16 Complaint, paragraph 42.

17 MR. LEIB: You know what, I'm going to skip  
18 that question, and I think now would be a good time  
19 to take a break.

20 MR. GUGLIELMO: Perfect.

21 THE VIDEOGRAPHER: We are going off the record  
22 at 4:08 p.m. This is the end of Media Set 5.

23 (A short break was taken.)

24 THE VIDEOGRAPHER: Back on the record at

1           A.     They are in this. I just seen them  
2     recently. They're in these binders.

3           MR. GUGLIELMO: They have been produced.

4     BY MR. LEIB:

5           Q.     Okay. We'll take a look for those, but  
6     I'm asking you where in the contract it provides  
7     for a specific -- now, let me say this: At the end  
8     of the year, they do a reconciliation; correct?

9           A.     Reconciliation is on brand name drugs  
10    only.

11          Q.     Well, that's -- let's take a look. Let's  
12    go back to Exhibit E. Let's go to the bullet  
13    points on page 64.

14                 The first sentence "LDI will separately  
15    reconcile the guarantees for each pricing component  
16    on an annual basis." Do you see that?

17          A.     Yes.

18          Q.     Now, have you received any money back from  
19    LDI as a result of such a reconciliation?

20          A.     Yes.

21          Q.     Now, I'm talking not as part of a  
22    reconciliation process at the end of the year where  
23    it determines average overall the purchases for the  
24    entire year. I am talking about for an individual

1 Price or," and then it lists other things. Do you  
2 see that?

3 A. Yes.

4 Q. So it has same type of "lesser of" logic  
5 that your Medtrak contract has; right? It may not  
6 be the same exact provisions, but it has "lesser  
7 of" logic. Do you see that?

8 A. Yes.

9 Q. And one of the "lesser of" is provider's  
10 usual and customary retail price. Do you see that?

11 A. Yes.

12 Q. Let's look at Section 1.24 on page 5.  
13 Do you see that it defines "Usual and  
14 Customary Retail Price" as "the retail price of a  
15 Covered Medication in a cash transaction at the  
16 Pharmacy dispensing the Covered Medication (in the  
17 quantity dispersed) on that date that it is  
18 dispensed."

19 A. Yes.

20 Q. And I said dispersed. I meant dispensed.  
21 I'll reread it.

22 It says "The retail price of Covered  
23 Medication in a cash transaction at the Pharmacy  
24 dispensing the Covered Medication (in the quantity



1       dispensed closed) on the date it is dispensed."

2               Do you see that?

3           A.     Yes.

4           Q.     There is no discussion of the discounts;  
5       correct?

6           A.     No, just the retail price of the  
7       medication.

8           Q.     So based on that, if Walgreens reported  
9       the U&C to LDI as the retail price, then it  
10      reported the statistic LDI needs to know in order  
11      for LDI to know what it's required to pay  
12      Walgreens; right?

13          MR. GUGLIELMO:   Objection to form.

14          THE WITNESS:   Yes.

15       BY MR. LEIB:

16          Q.     Even if the PSC price were \$10 and the  
17      retail price was \$50, under this contract,  
18      Walgreens had to report to LDI the retail price of  
19      \$50; correct?

20          MR. GUGLIELMO:   Objection to form.

21          THE WITNESS:   Yes.

22       BY MR. LEIB:

23          Q.     If LDI needed any additional information  
24      from Walgreens to know how much LDI is required to

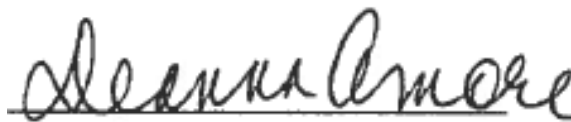
C E R T I F I C A T E

I, DEANNA AMORE, a Shorthand Reporter and  
notary public, within and for the State of  
Illinois, County of DuPage, do hereby certify:

That CHARLES E. BAILEY JUNIOR, the witness  
whose examination is hereinbefore set forth, was  
first duly sworn by me and that this transcript of  
said testimony is a true record of the testimony  
given by said witness.

I further certify that I am not related to  
any of the parties to this action by blood or  
marriage, and that I am in no way interested in the  
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 15th day of June 2019.

A handwritten signature in cursive script, reading "Deanna Amore", written over a horizontal line.

Deanna M. Amore, CRR, RPR, CSR